AFR 107

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A. No. 866 of 2004

APPELLANTS

1. Kheluram, S/o Pran Singh, Aged about 27 years, R/o Village and Post Narra, P.S. Bagbahara, Distt. Mahasamund (C.G.).
2. Pilendra Kumar Sahu, S/o Dayaram Sahu, Aged about 40 years, R/o Village Kodopali, Post Bhurkoni, P.S. Pithora, Distt. Mahasamund (C.G.)

Vs

RESPONDENTS

1. Kamal Prasad, S/o Devi Singh, Aged about 50 years, Caste Pade, Occupation-Teacher, R/o Village Bindrawan, Post Narra, P.S. Bagbahara, Distt Mahasamund (C.G.)
2. The New India Insurance Co. Ltd., Through Branch Manager, Bhawani Patna (Orissa)

Mr. Manoj Paranjpe, Adv. with Mr. V. Goverdhan, Adv. for the appellants.

None for the respondents, though they are served.

ORAL ORDER

(1.5.2007)

Per Dhirendra Mishra, J

Heard.

The owner & driver of the motorcycle bearing registration number MP23 YA 9038 have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter shall be referred as 'the Act') against the

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आदेश पत्रक (पूर्वानुबद्ध)

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Vehicles Act, 1988 (hereinafter shall be referred as 'the Act') against the award dated 31.3.2004 passed by the 2nd Additional Motor Accident Claims Tribunal, Mahasamund in Claim Case No.36/2003 whereby learned tribunal has awarded a sum of Rs.90,800/- to respondent No.1 towards the injuries sustained by him in the accident dated 27.5.2002 while appellant No.1 was driving the said vehicle rashly and negligently.

The appellants have preferred this appeal firstly on the ground that there is evidence available on record to show that appellant No.2 was not the owner of the motor cycle in question, as the same stood transferred to one Manohar Gond, who in turn transferred it to one Puran. However, the tribunal has fastened the liability upon the appellant No.2 without considering the above fact. The subsequent purchasers namely Manohar Gond & Puran were necessary parties for proper adjudication of the claim petition and in their absence the claim petition could not be adjudicated. The second ground raised by the appellants is that the claimant has relied upon for the purposes of his claim on the documents being receipts towards purchase of medicines, which are on the face of it false and fabricated.

Placing reliance on the judgment of M.P. High Court in the matter of **Sanjay Singh Thakur Vs. Sultan Ahmad and others** reported in **1996 M.P.L.J. 83**, it has been argued that where the transfer of motor cycle on payment of price and delivery of possession to purchaser sale is complete, recording of name in registration certificate is immaterial. Reliance is also placed on the judgment of High Court of Himachal Pradesh at Shimla in the matter of **National Insurance Co. Ltd. Vs. Bimla Devi and others** reported in ~~**2006 ACJ 402** and it has been argued~~ that documents which are not public

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documents cannot be brought in evidence nor can any reliance be placed upon them unless they are proved.

I have heard learned counsel for the appellants.

So far as the first ground taken by the appellants in this appeal is concerned, there is no dispute that appellant No.2 is the registered owner of the vehicle, there is also no dispute that the appellant No.1 was driving the said vehicle at the relevant time and accordingly they have been arrayed as non-applicants No.1 & 2 being driver & owner of the vehicle in question. On the basis of the pleadings of respective parties, the tribunal has framed issues and while dealing with Issue No.1 i.e. whether on 27.5.2002 at about 7.00 p.m. the motorcycle, driven by non-applicant No.2 and owned by non-applicant No.1, was being driven rashly & negligently and dashed against Kamal Prasad, has held that though non-applicant No.2 has examined Sunhar as AW-2, who is brother of Manohar Gond and Sunhar has stated that his brother Manohar had purchased the motorcycle from Pilendra i.e. non-applicant No.2 and thereafter he sold the same to one Puran after 2-3 months. He has further stated that he is not aware as to who is in possession of the motorcycle at present and he is also not aware of whereabouts of Manohar, as he has not returned since last two years. He has not stated as to on what consideration the vehicle has been purchased by his brother. He has also stated that he entered into witness box at the request of appellant No.2 herein.

Thus, on the basis of the statement of AW-2, the tribunal has held that the registered owner of the vehicle has failed to prove that the vehicle was in fact, transferred to Manohar Gond by him, as no document has been produced by the appellant No.2 regarding transfer of motorcycle in favour of

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आदेश पत्रक (पूर्वानुबद्ध)

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said Manohar. Even the purchaser has not been examined and brother of purchaser, who has been examined as AW-2, is not aware of the transaction, as is evident from his deposition. Moreover, the judgment cited by learned counsel for the appellant relates to a dispute where liability of payment of interim award was under consideration and considering that there being a dispute regarding ownership of vehicle, the High Court has held that the tribunal should have at this juncture directed the registered owner and the transferee both to be answerable to meet the interim award and accordingly, it was held that the registered owner and the transferee both shall be jointly and severally liable to pay the amount of interim award. However, in the present case the appellant No.2 has failed to establish by leading oral or documentary evidence that the motorcycle involved in the accident was in fact, transferred by him to Manohar Gond, as alleged, and therefore, the tribunal has rightly held that the appellant No.2 is jointly and severally liable to satisfy the compensation along with the driver i.e. appellant No.1 herein.

So far as the second ground taken by the appellants that award is based on the documents which are on the face of it concocted documents is concerned, to establish this ground learned counsel for the appellant has referred to the documents Ex.P-16, 17, 20, 23 & 26 and submitted that cash memo numbers and dates of issuance of these cash memos go to show that the documents were subsequently procured by the claimant just to obtain hefty compensation, as the number of bills and dates go to show that the same could not have been issued on the dates on which they are shown to have been issued. Further submission is that the bills ought to have been proved

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आदेश पत्रक (पूर्वानुबद्ध)

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by the claimant since they are not public documents and therefore, no credence could be given to those documents by the tribunal.

From the oral and documentary evidence available on record, particularly from the X-ray films and reports given by the Radiologist, it is established that the claimant suffered fractures on his thigh, elbow and also serious injury on the skull. The claim proceedings are summary proceedings and for the purposes of establishing the expenditure incurred by the claimant in his treatment, medical bills receipts may be proved by the claimant, as has been proved in this case, and he is not required to summon the Chemist, who has sold the medicines through the receipts to the claimant. Moreover, no objection was raised by the appellants in this regard before the tribunal and there was no pleading by the appellants that the bills were in fact fabricated bills procured just to obtain compensation.

In view of the above, I am of the considered opinion that the impugned award passed by the tribunal is based on the documentary and oral evidence available on record and there is no substance in this appeal, the same is liable to be dismissed and accordingly, it is hereby dismissed.

Sd/-
DHIRENDRA MISHRA
Judge